

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF TENNESSEE
3 WESTERN DIVISION

4
5 UNITED STATES OF AMERICA,

6 Plaintiff,

7 vs.

NO. 2:20-CR-20009

8 FREDERICK COLEMAN,

9 Defendant.

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13 SENTENCING HEARING

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15
16 BEFORE THE HONORABLE JON P. McCALLA, JUDGE

17
18 FRIDAY

19 26TH OF FEBRUARY, 2021

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22 LISA J. MAYO, RDR, CRR
23 OFFICIAL REPORTER
24 FOURTH FLOOR FEDERAL BUILDING
25 MEMPHIS, TENNESSEE 38103

UNREDACTED TRANSCRIPT

A P P E A R A N C E S

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FRIDAY

February 26, 2021

THE COURT: This is Judge McCalla, and we're going to proceed. And we'll open court. We're here in connection with the sentencing, United States of America versus Frederick Coleman, Case Number 20-20009. The position paper of the Defendant was received, and of course, there was an objection as to the two-point enhancement on the subject of restraint. The Court entered an order overruling the Defendant's objection yesterday as Document 135. I need to confirm, of course, that that has been received, and Mr. Ferguson, I see that it has; is that correct?

MR. FERGUSON: It has been, Your Honor. Thank you.

THE COURT: There was also some discussion and a possible objection in connection with the role in the offense. If you will look at the Page 6 calculation, you will see that there was no adjustment for role in the offense. It does appear that the role in the offense was no different than that of a normal participant, particularly as to one of the crimes. And in the other crime, the Defendant participated at least as a getaway driver. I don't know if

1 that is being pursued at this time by Mr. Ferguson. What is
2 our situation?

3 **MR. FERGUSON:** Your Honor, I'm asking the Court
4 to consider it in the sentencing memorandum with our request
5 for adjustments and variances on Page 4. We are asking the
6 Court to consider basically several different ways to
7 consider the same fact, which is we believe that as far as
8 the Captain D's crime goes, the second Hobbs Act robbery, my
9 client played what would be defined as a minimal, would be a
10 minimal participant in that case in that he was acting
11 plainly among the least culpable of those in a conduct of a
12 group. He did not enter the premise, did not display a gun,
13 did not leave the premise with any items and was at a fairly
14 -- was fairly far away at the time that the other party in
15 the group was conducting the crime. We believe that that
16 would meet the definition under -- I think it's 3B1.2 as a
17 minimal participant, at least a minor participant where he's
18 least culpable than the most other participant in the
19 criminal activity, which would give him, it says a four-point
20 reduction for least. The minor gives him two, and the
21 guidelines provide for something in the middle that would be
22 three.

23 We believe that based on the guidelines, he
24 should get four points under 3B1.2. However, if the Court
25 does not find that he -- that the facts support the

1 adjustment, we believe that the facts would still support
2 this Court finding a variance, while not rising to the level
3 under the guidelines, still the Court can take it into
4 consideration under the factors, 3553 factors of the nature
5 and circumstances of the crime itself, finding that he played
6 a minimal or a minor role in the Captain D's crime and
7 adjusting his sentence and/or the way in which he serves the
8 sentence based on the variance.

9 We also had asked the Court to consider the
10 variance for his behavior of being aberrant. We acknowledge
11 the fact that it does not qualify under the guidelines under
12 5K2.20 but again believe that this Court can find under the
13 3553 factors concerning his near -- and I say near because
14 it's not no, but near lack of criminal history and nothing in
15 his background that would indicate that over the course of
16 about 6, 7 days he would be involved in two armed robberies,
17 Hobbs Act robberies, which would represent a marked deviation
18 from his otherwise law-abiding life.

19 We do recognize the fact that he was on diversion
20 at the time for evading arrest, you know. We can argue the
21 nonviolent crime at that, a misdemeanor. It may not be a
22 misdemeanor. I've got to look at that again. But he has no
23 gang affiliation, no thefts, no gun charges. No other crimes
24 that would indicate that he would rob the stores. So we
25 really find or ask the Court to find that this was aberrant

1 behavior on this pretty short period of 6, 7 days. So those
2 are the -- either the adjustment or variances that we're
3 asking the Court to take into consideration based on the
4 facts.

5 **THE COURT:** Mr. Whitmore?

6 **MR. WHITMORE:** Thank you, Your Honor. I
7 apologize, Your Honor. I could not change the name on my
8 computer screen. I tried signing off several times, and I
9 just couldn't figure out how to do it, because my wife uses
10 it for her job Zoom as well.

11 **THE COURT:** It's no problem. No problem at all.

12 **MR. WHITMORE:** Your Honor, as the Court knows,
13 these type of mitigation roles are typically consistent with
14 drug offenses because of the nature of -- even the examples
15 that's given in 3B1.2 to some extent address this several
16 ways in terms of drug offenses. It also give an example of a
17 healthcare fraud type scheme. But in the case of robbery,
18 because there's such -- each role is essential a lot of times
19 to the crime, typically a robbery is composed of different
20 roles. You have a lookout. You have a driver, and you have
21 the gunman. And all of those roles are essential to the
22 criminal activity.

23 Also, yes, one individual can engage and go into
24 a business and rob the business, but, again, that creates
25 problems in terms of not having a car already cranked up,

1 ready to go through, not having someone to look out, whether
2 or not the cops and police is in the area. But in this
3 particular case, Your Honor, Mr. Coleman's role was
4 essential. It was set up as the driver, and that driver was
5 essential in to making sure that it was successful in terms
6 of being the getaway driver.

7 We know in the Waffle House robbery, he actually
8 went inside, directed the person who was walking outside back
9 into the place, stood there with the gun while Mr. Hall
10 robbed the business. And so for that reason, Your Honor, we
11 see that his participation is significant. It's just as
12 serious as Mr. Hall when we think of all three robberies
13 together.

14 We know for the purpose of sentencing, the Court
15 consider even acquitted conduct. But when we look at all
16 three robberies together and Mr. Coleman's role in each of
17 them, we know that in the Dixie Queen where he, again, was
18 acquitted conduct, the Court can consider that. He actually
19 got out of the car and went inside the business, and so he
20 had a different role in that particular robbery. So for that
21 reason, Your Honor, we believe that that would be
22 inappropriate under these set of facts.

23 **THE COURT:** Anything else on this, Mr. Ferguson?

24 **MR. FERGUSON:** No, Your Honor. We appreciate the
25 opportunity.

1 **THE COURT:** Certainly. On the issue of the role
2 in the offense, Mr. Whitmore has accurately analyzed it.
3 It's clear that the Defendant played a traditional role, that
4 is a regular participant role, in at least one of the crimes
5 of conviction, and it appears that he also played a
6 conventional role, whatever that is, but a normal role, a
7 regular participant role in the related conduct.

8 Now, it is important to go over a couple of
9 things. The first thing is that there appears to be no
10 dispute as to the facts as reflected in the offense conduct
11 section of the presentence report. Those are the facts that
12 we use to analyze whether or not he would be entitled to a
13 reduction under the 5K series of guidelines.

14 I'm going to read just a small portion of that.
15 In page -- on Page 4, Paragraph 5, Waffle House robbery on
16 July 9, 2019. Police responded to a call at the Waffle House
17 on American Way. Upon arrival, the victim, Ms. Matthews,
18 told the officers that two male subjects entered and robbed
19 the business at gunpoint. Ms. Matthews stated that as she
20 and Stacy Stafford were walking out of the business to take a
21 smoke break, they were approached by one of the subjects who
22 was armed with a sawed-off shotgun and another subject who
23 was armed with a small silver revolver.

24 Both of the subjects forced Matthews and Stafford
25 back inside the business, and the subject with the shotgun

1 stated, you know what it is. Come open the register. He
2 then took the cash from the cash register while the other
3 subject was the lookout. Both of the subjects fled the scene
4 on foot. Subject 1 was wearing a black and gray shirt, brown
5 pants and a black ski mask. Subject 2 was wearing a black
6 shirt, pants and a purple bandana over his face. Rafael Hall
7 was later identified as Subject 1, and Mr. Coleman was
8 identified as Subject 2.

9 I think this particular recitation, which is not
10 disputed, makes it clear that Mr. Coleman was a regular
11 participant in the criminal conduct. It's also correct in
12 connection with the argument as to Captain D's by
13 Mr. Whitmore that Mr. Coleman still played an essential role
14 in the crime itself. So that would by itself qualify,
15 although the first crime, the Waffle House crime is very
16 clear as to how Mr. Coleman should be characterized. I agree
17 with Mr. Whitmore that it's also proper to be characterized
18 as a regular participant in the Captain D's robbery. We're
19 also allowed to look at the other conduct as set out in the
20 Dixie Queen event on July the 8th, even though that is not
21 conduct as to which there was a conviction. I don't need to
22 go through that, but Mr. Whitmore has accurately related that
23 also. So this is not a case where we would normally allow a
24 reduction for role in the offense.

25 Wait just one second. I'm going to go through

1 one more item. Under mitigating role, it is correct that a
2 defendant who is a minimal participant in any criminal
3 activity is entitled to a four-level decrease. I don't
4 perceive that the Defense is really arguing for that. I do
5 understand that the Defense would be arguing for perhaps a
6 three level or a two level or a one, I suppose.

7 The second is that if the Defendant was a minor
8 participant in the criminal activity, you do decrease by two
9 levels, and of course in cases that fall between A and B, you
10 can decrease by three, and I think you could also
11 theoretically decrease by one. We've discussed the
12 participant and the requirement for multiple participants,
13 and there were multiple participants here, so I think that
14 we've probably covered what we need to. It is correct that
15 we do reduce the points where there is substantially less
16 culpability than the average participant. That's simply not
17 the case here.

18 Now, the next question though is on the subject
19 of aberrant behavior. Any discussion on that, Mr. Ferguson?

20 **MR. FERGUSON:** Your Honor, this is a 30-year-old
21 individual, who, for the most part, has what was reduced down
22 to a disorderly conduct and was on diversion for a
23 misdemeanor evading arrest. He has nothing in his background
24 that indicates that this was the behavior that we would be
25 expecting from a 27, 28-year-old Frederick Coleman or 29 at

1 that time, 28, Frederick Coleman. It is so far outside the
2 scope of nearly 30 years of his life. It's outside the scope
3 of everything that would make up any indication of his
4 criminal background from the age of juvenile court, which is
5 about 12 or 13 on, that this is so far outside the normal
6 course and behavior of Mr. Coleman that I think it qualifies
7 under the variance. We do know it doesn't qualify
8 necessarily under the adjustment, but we think that for
9 purposes of fashioning the appropriate sentence, this Court
10 should find that this was aberrant behavior and take that
11 into consideration as we argue what the appropriate
12 punishment should be for this particular defendant with this
13 particular crime. Thank you.

14 **THE COURT:** What about the language of the
15 provision itself? The Court may depart downward under this
16 policy statement only if the Defendant committed a single
17 criminal occurrence or single criminal transaction, that one,
18 was committed without significant planning; two, was of
19 limited duration; and three, represented a marked deviation
20 by the Defendant from an otherwise law-abiding life. I
21 understand that you're arguing and there may be some evidence
22 to support the third component, that is, that it represented
23 a deviation by the Defendant from an otherwise law-abiding
24 life, but we have other components that would normally need
25 to be met.

1 **MR. FERGUSON:** And again, that's why the very
2 first line in my sentencing memorandum says that he doesn't
3 qualify for it under 5K2.20. We're asking you under the
4 3553 factors simply to consider that when finding that
5 sentence which is adequate -- the least but adequate sentence
6 for Mr. Coleman that the need to deter him from future
7 criminal behavior is so small in this case because he simply
8 doesn't have that background. If this Court could find that
9 third prong normally that was so far outside the normal
10 behavior, that that limits and reduces the Court's need to
11 impose a greater punishment to deter him from future criminal
12 activity. Thank you.

13 **THE COURT:** Certainly. Certainly.

14 Mr. Whitmore?

15 **MR. WHITMORE:** Your Honor, I think you said
16 exactly my response. I mean, we have -- I think that that is
17 a situation where a defendant, for whatever reasons, decides
18 to commit a crime, and it's one crime and he has no criminal
19 history. Limited, very limited criminal history. In this
20 particular case, Mr. Coleman committed a robbery on July 8th,
21 and maybe if he had stopped there, maybe there's a potential
22 argument, but then he committed another robbery on July 9th.
23 And then we have another robbery on July 15th. And as the
24 Court knows, robbery, sometimes there could just be a
25 knee-jerk reaction. Two gentlemen riding by the car and

1 decide to rob a particular place. But anytime you start
2 engaging in multiple robberies, there's a certain amount of
3 planning that goes on.

4 It seems that even when we look at Mr. -- the
5 robbery at the Captain D's, he was parked in a car wash,
6 quite a bit of space distance from the Captain D's. When you
7 look at his role in the Dixie Queen that they gradually drove
8 through the drive-in and kind of stayed back and waited. I
9 mean, all of these things, there's a certain amount of
10 planning that went into these activities. So for that
11 reason, Your Honor, for the purpose of the aberrant behavior,
12 I understand Mr. Ferguson wanting to weave this into his
13 3553 arguments, but for the purpose of the aberrant behavior,
14 we object.

15 **THE COURT:** And I think that Mr. Ferguson has
16 been candid in acknowledging that it really doesn't meet the
17 guideline. It's clear that it does not meet the guideline
18 requirements, and the only argument I think that's being
19 advanced now -- and I'm sustaining the Government on any
20 variance, and I think it's not really -- not opposed by
21 defense counsel. I'm sustaining the position on that. The
22 only thing we have to consider is consider whether it's a
23 basis for a variance. So I'll sustain the position of the
24 United States, which is really not that much in conflict with
25 Defense position, and then we'll talk about it in light of

1 the 3553(a) factors.

2 I think, Mr. Ferguson, that addresses the issues
3 here. I know that, however, you may want us to have an
4 opportunity to hear from Mr. Coleman, and Mr. Coleman, I want
5 to make sure you've been able to hear us okay. You've been
6 able to hear us okay?

7 **THE DEFENDANT:** (No audible response.)

8 **THE COURT:** You're on mute, so I think if you're
9 responding, we wouldn't be able to hear that.

10 **MR. WHITMORE:** Excuse me, Your Honor?

11 **THE COURT:** Yes, sir.

12 **MR. WHITMORE:** It seems -- I think Mr. Coleman
13 may have a witness as well.

14 **THE COURT:** Yes, that's fine. I'm just checking
15 on hearing. Rechecking on hearing. I think that it's not
16 been a problem, but I usually do that at the very beginning.
17 I want to check now. You've been able to hear us all right?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** Okay. Yes, sir. I do want to also
20 reconfirm that you have agreed to handle this sentencing by
21 Zoom in light of the circumstances created by the COVID-19
22 pandemic; is that still correct?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** And also you did want to have someone
25 here also, and I think she is here; is that correct also?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** Okay. I think then we are ready to
3 proceed with any testimony, and of course a chance for
4 allocution by Mr. Coleman.

5 Mr. Ferguson?

6 **MR. FERGUSON:** Your Honor, the people who are on
7 line are family members who just wanted to be present.
8 They're not witnesses. So they had asked for the Zoom
9 password, and we were able to get them to it. Obviously,,
10 since this is still considered an open court, they're here
11 simply as observers, not as witnesses.

12 **THE COURT:** That's fine.

13 **MR. FERGUSON:** We won't be calling them.

14 **THE COURT:** I did see Ms. Stephanie Coleman on
15 line. There may be someone else. I don't know because it's
16 a blank screen there.

17 **MR. FERGUSON:** Your Honor, the last I saw, it
18 should have been Ms. Coleman. It should be Mr. Coleman's
19 wife and possibly his mother, but I know she had to be at
20 work this morning, but she did want to be present also. So
21 there's at least two, if not three of his family members who
22 are here just to show the Court that he does have family
23 support.

24 And I would ask if Mr. Coleman wishes to make any
25 statements. Mr. Coleman, if you have something that you feel

1 the Court needs to hear from you, this is your chance, and
2 you don't have to, as we talked about. If you want to, you
3 can.

4 **THE COURT:** Mr. Coleman, is there anything you
5 wanted to let us know about? This is a chance to make any
6 statement you would like to make.

7 **THE DEFENDANT:** I really haven't gave much
8 thought or planning, but I would like the Court to know that
9 I'm not a bad person. I'm not a criminal. I worked all my
10 life. I worked two jobs to provide for me and my family. I
11 have a one-year-old son that I would love to get back to so I
12 can raise him as a man, and I have a loving wife, family.
13 I'm a regular person like everyone else. I'm not a criminal,
14 and that is not the thing that I do. And really haven't much
15 to say, but I would like you all to know that.

16 **THE COURT:** Certainly. Anything else?

17 **THE DEFENDANT:** No, Your Honor, nothing that I
18 can think of at the moment.

19 **THE COURT:** All right. I think we're ready to
20 proceed on discussion of factors under 18 U.S.C.
21 Section 3553(a), and we'll start with the United States
22 under 3553(a) factors. I'm going to go through a couple of
23 things at this point however. In this case the Court will
24 adopt the presentence report as set out, offense level total
25 is 24. The criminal history category is II. There are four

1 counts of conviction after a jury trial. The robbery counts
2 were Counts 3 and 5, and they have a maximum sentence of
3 20 years and the guideline range of 57 to 71 months.

4 In connection with the 924(c) counts, those are
5 Counts 4 and 6. The sentencing possibilities under 924(c)
6 counts are in this case because they're brandishment of a
7 firearm, no less than seven years. If you look at the
8 presentence report, of course, the maximum sentence for a
9 924(c) violation is life in prison. We have two 924(c)
10 violations, Counts 4 and 6. 924(c) violations are served
11 consecutively as opposed to concurrently, and they are
12 consecutive to each other and consecutive to the robbery
13 crimes set out in Counts 3 and 5.

14 That results in a possible sentence as reflected
15 in the recommendation, which you all have with a low end of
16 225 months. Looking at the recommendation sentence that is
17 the recommendation indicated. So we're looking at a
18 difficult sentence in the case, as everyone can tell. To put
19 it in terms of years, the recommended sentence is 18 years
20 and 9 months.

21 Are there any objections or corrections to the
22 calculations under the discussion of minimum sentences in the
23 case? Mr. Ferguson?

24 **MR. FERGUSON:** No objections to the calculations,
25 Judge.

1 **THE COURT:** Anything at all I should ask also
2 from the Government?

3 **MR. WHITMORE:** No, Your Honor, thank you.

4 **THE COURT:** Does the Government wish to take a
5 position regarding the application of 18 U.S.C.
6 Section 3553(a) and possible final recommendation?

7 **MR. WHITMORE:** Yes, yes, we do, Your Honor.

8 **THE COURT:** Yes, sir.

9 **MR. WHITMORE:** Thank you, Your Honor. In
10 considering the 3553 factors and as we start, Your Honor,
11 with the nature and circumstances of the offense, what's
12 important here that I think that a trial brings out is the
13 victim element. We seldom get a chance to see the impact
14 that these cases have on the victim. Yes, when we look at
15 the history and characteristics of Mr. Coleman, but when I
16 look at the nature and circumstances of the offenses, we have
17 several victims in this case.

18 When we start off with the victims that the Court
19 heard from the Waffle House. The Court heard Tylanda
20 Matthews and Stacy Stafford, and they talked about the fear,
21 the intimidation and how that just affected them days and
22 weeks after. When we look at the Captain D's robbery, that
23 robbery was very -- really graphic in terms of what could
24 have happened when Mr. Hall pointed a gun at a 16-year-old
25 young man. I almost wanted to say kid. I hope I can still

1 say that, but a 16-year-old kid who had only been working
2 there less than a week, and literally this happened almost on
3 his birthday. And Mr. Hall, when he pulled the gun on
4 Mr. Xavian Cain, he had no idea that his mother was there
5 standing behind him and almost, if it wasn't for the sister
6 trying to intervene, and we only know what would have
7 happened if that had happened.

8 And so -- and then we look at -- when we look at
9 the Dixie Queen, we have, as the Court knows, in terms of
10 even though he was acquitted, that information can be
11 considered for the purpose of punishment in 3553, is that you
12 had two gentlemen working that night, and they were robbed at
13 gunpoint. People entered the business. They had to run out
14 of the business. So when we think about the robbery, I mean,
15 that is a very, very aggressive crime. It is no other crime
16 close to so a personal act against an unwilling participant.

17 These are people who woke up in the morning, went
18 to work to provide for their families, and to face a gunman,
19 putting a gun in their faces, and all the witnesses stated
20 that they -- that they feared for their life. People thought
21 they were going to die. A gunman pointed. So when we look
22 at the nature and circumstances of the offense of these
23 offenses, I mean, this is as serious as it gets. And we're
24 not talking about one robbery, and we're not talking about
25 one victim. We are talking about multiple victims and

1 multiple robberies. So the circumstances of the offense is
2 very serious.

3 There is some credit to Mr. -- when we look at
4 the history and characteristics of Mr. Coleman, it seems to
5 his credit, Your Honor, he has an employment history that we
6 sometimes seldom see, and his criminal history is somewhat
7 limited. It's not as egregious. But Your Honor, that only
8 mitigate the fact in light of the multiple robberies.
9 Typically I would be asking for a high end of the guideline
10 as it relates to the robbery. And his lack of criminal
11 history and employment may mitigate the Government asking for
12 the high end of the robbery.

13 When we look at the -- that an offense should
14 reflect the seriousness of the offense, promote respect for
15 the law, as well as general deterrence, I think people ought
16 to hear about a person engaging in robbery receiving a
17 substantial punishment, especially when they involve multiple
18 robberies and they involve the firearm. If Mr. Coleman maybe
19 had just only been the getaway driver but we showed in one of
20 the robberies, he actually went in the business, escorted the
21 witness back into the -- I'm sorry, the victim back into the
22 business, pointing a gun at the victim.

23 And so with that being said, Your Honor, the need
24 for adequate deterrence for that type of criminal behavior is
25 very serious, and the specific deterrence, that may not be as

1 great in light of Mr. Coleman criminal history. We're not --
2 again, we're not conceding that this is an aberrant act.
3 Maybe if it involved one act but because it involved multiple
4 acts, multiple opportunities where the individuals had to
5 plan, and so for that reason, Your Honor, we're asking for a
6 guideline sentence. We're asking for a middle of the
7 guideline range, consecutive to 14 years.

8 **THE COURT:** All right. A middle guideline range
9 in connection with the robberies would be something between
10 57 and 71 months, with 14 years then consecutive as a result
11 of the 924(c). So that's the Government's recommendation and
12 request.

13 Mr. Ferguson, what do we need to do here?

14 **MR. FERGUSON:** Yes, Your Honor. Thank you. If
15 you have any trouble hearing me, please let me know. This
16 may be a little bit of a mixed metaphor. Obviously, in state
17 court the distinction between robbery and agg robbery is use
18 of a gun. We have -- in federal court we have Hobbs Act
19 robbery, and then we have the 924. So if I refer to this as
20 an aggravated robbery, that's why I'm doing it today.

21 I think there's no one on this phone call that
22 would deny the fact that under the nature and circumstances
23 of the offense that every aggravated robbery is aggravated.
24 The very use of a weapon during the course of a robbery
25 increases the potential for violence, the danger in this, the

1 impact it has on those people who are the victims of these
2 kind of crimes. I do not shy away from that fact in this
3 case. These are -- if it had been state court, these are
4 aggravated robberies. Obviously, Hobbs Act robbery and the
5 corresponding two 924s. That is what it is, and these were,
6 as far as aggravated robberies go, unfortunately or
7 fortunately, these were -- I don't want to say -- I don't
8 want to say average or normal aggravated robberies, but we
9 have all dealt with cases where they were much worse. And
10 unfortunately in my state court practice, a lot of my murders
11 start out as aggravated robberies that go horribly off the
12 rails very quickly.

13 This could have been much worse. I think it's
14 probably what I'm trying to express to the Court. However,
15 we not only have to look at the nature of the crime, we have
16 to look at the history and characteristics of the Defendant.
17 This Court is bound by the parsimonious clause that the
18 punishment should be no more than necessary and that because
19 of the 924 consecutives, mandatory minimums create a base
20 that this Court cannot go down below anything below 14 years
21 just on those two charges alone, which are and is, in our
22 opinion, a lengthy punishment, a punishment that is deserved
23 and a punishment that does reflect the seriousness of the
24 nature and circumstances of the offense when taken into
25 consideration the Defendant who is 30 years of age this month

1 with a prior criminal history of a disorderly conduct and an
2 evading arrest that he was on diversion for. It appears from
3 the presentence report they filed a violation and then
4 dismissed it, so technically I would assume that means his
5 evading arrested was diverted and is no longer on his record.

6 As far as deterrence goes, I've already talked
7 about that when we talked about the aberrant behavior.
8 There's nothing in Mr. Coleman's prior history, and we know
9 that prior history is the greatest predictor of future
10 behavior. There is nothing in his prior history that
11 indicates -- well, let me back up. There's nothing in his
12 prior history that indicated that he would be doing these
13 crimes, first of all. Second of all, with the punishment
14 that this Court has to give him, with his prior history of no
15 prior or previous violent felonies, violent offenses, there
16 is nothing that indicates that anything more than the minimum
17 sentence in this case would increase any deterrence either
18 both Mr. Coleman's future behavior or those other individuals
19 in the community that somehow we, under this deterrence
20 philosophy, think that people watch what sentences other
21 people get change their behavior based on those other
22 peoples' punishments.

23 I think that even if that were factually true and
24 that people did review the press releases of the federal
25 government and make determinations how they were going to

1 live their life, a 14-year sentence sends a message to those
2 individuals that a decade and a half of your life is
3 forfeited at the age of 30 for the choices you made. A
4 decade and a half is a long, long time for somebody who, for
5 all practical purposes, led what would be considered a
6 extremely normal -- and actually it's probably -- it's
7 probably my bias as a criminal defense attorney who doesn't
8 necessarily get to see what normal is on a day-to-day basis,
9 but his normal life, his personal life is he's married, has a
10 son, was employed. His wife works. His baby is healthy. He
11 has no physical, no mental, no substance abuse issues, he's
12 not a gang member.

13 He actually dropped out of school, but he dropped
14 out of school indicating some academic difficulty. He didn't
15 drop out of school because he was getting into trouble. He
16 didn't drop out of school because he was doing drugs. He
17 didn't drop out of school because he was involved in gangs.
18 He didn't drop out of school because he didn't have a loving
19 family that supported him and wanted him to do well. He just
20 simply had academic difficulties that were not -- apparently
21 were not properly addressed or properly addressed by the
22 school system. And so he does not have a high school degree
23 but for the fact that he had difficulties.

24 I'm asking the Court and the Court has the
25 authority to do this, we know under the Dean case, holding

1 that nothing in the requirements of the consecutive sentences
2 on the 924s prevents the Court from imposing time served on
3 the nonconsecutive sentence. This is a case where luckily
4 this is under the new sentencing for 924, so he's not facing
5 a 25-year sentence on the second one, but they are, I guess,
6 brandishing or employing seven years on each, and that
7 amounts to 14 years of his life. And I believe that for
8 purposes for meeting the no more than necessary under the
9 3553 factors that this Court has reviewed and has been
10 presented, I think that 14 years is the adequate sentence
11 that's no more than necessary punishment for Mr. Coleman in
12 this case.

13 So we are asking the Court to set the punishment
14 at 14 years, and I would assume that that would be time
15 served on the underlying two Hobbs Act robberies. That's our
16 recommendation for the Court. We ask the Court to accept
17 that and sentence Mr. Coleman to 14 years. Thank you, sir.

18 **THE COURT:** In every case we consider the same
19 factors, those that are required under 18 U.S.C.
20 Section 3553(a). In this case the first factor we consider
21 is what did the Defendant do. The way that is stated in the
22 statute is that we look at the nature and circumstances of
23 the offense. That has been gone over already.

24 And we have a case in which there were a number
25 of witnesses. In fact, there were 15 witnesses. We heard

1 from the individuals who were present at the locations that
2 were robbed and the impact on them, and it was impactful to
3 everyone in the courtroom as we heard the testimony regarding
4 the mother watching her young son be robbed. All of them
5 were significant events. Each of the robberies were a
6 significant event in the life of each of the families.

7 The record is well developed as to what happened
8 and well developed as to Mr. Coleman's role in each of those
9 robberies. I adopt the position as set out by Mr. Whitmore
10 as he articulated the particular events.

11 The second question is the one that has been most
12 important for the Defense in the case, and that -- and it's
13 been important to the Government, and that is what is the
14 history and what are the characteristics of Mr. Coleman. We
15 have a detailed report, and it sets out Mr. Coleman's
16 educational background as well as information that is always
17 important in terms of mental acuity and so forth.

18 The personal data starts on Page 12 of the
19 report, and it reflects the fact that his mother has been
20 employed with the city of Memphis, apparently for a long
21 period of time. He has four siblings, provides some of the
22 information regarding those siblings, including that two of
23 the siblings, as I understand it, work in the medical area.
24 He was raised primarily by his mother in North Memphis.

25 He is married and that relationship remains

1 intact. He gave some information about living and the home
2 in which he has lived. It also, as usual, provides emotional
3 and mental health data, and there's no issue there, as the
4 Court understands it. On substance abuse it does provide an
5 important piece of information. It says that the Defendant
6 smoked marijuana from the age of approximately 16 until two
7 days prior to his arrest for the instant offense. He denied
8 the use of any other controlled substances or narcotics, but
9 he has also never participated in any substance abuse
10 treatment program.

11 On education, it provides information as to his
12 attendance at Millington High School. He did reportedly stop
13 attending. He did stop attending because of academic
14 difficulties. It appears that he may have participated in
15 special services class for mathematics and that he was active
16 in sports.

17 On employment it provides that he has been
18 employed at the FedEx World Hub for a period of time. Also
19 as a landscaper and at International Service System facility
20 in Memphis, Tennessee.

21 Now, it also provides information as to prior
22 criminal conduct, and it is limited. It is set out on Page 9
23 with a -- at age 18 assault fourth degree reduced or amended
24 to disorderly conducted in Greenville, Kentucky at age 18.
25 Driver's license issues and then evading arrest at age 28.

1 And very limited criminal history, as Mr. Clayborn pointed
2 out but a criminal history, just quite limited. He's had
3 other contact with the law, but it's been at Page 10 related
4 to driving violations primarily.

5 So that's the information available. Now, once
6 we know those two basic pieces of data, we're required to ask
7 ourselves these questions. The sentence needs to, one,
8 reflect the seriousness of the offense, promote respect for
9 the law and provide for just punishment for the offense.
10 These were crimes involving robbery, clearly with a firearm.
11 Those are very serious crimes, and that's been thoroughly
12 discussed. We would expect in the federal system for those
13 crimes a very substantial punishment. The concept that this
14 is something that could be passed over or overlooked or
15 treated lightly is simply not applicable in the federal
16 system. This is a -- this is a very serious crime or set of
17 crimes. So a sentence of multiple years, whether that would
18 be 15 or 16 or 17 or 18 or 19 or 20 is the idea behind the
19 federal sentencing process. That's what we would expect.

20 The second component that we're required to
21 consider is the sentence must afford adequate deterrence to
22 others. And Mr. Ferguson makes a good practical point which
23 is that tragically, in our society, we no longer report to
24 the public the consequences of this type of conduct.
25 Amazingly, if you look at the newspapers in 1920 or 1910 or

1 1900 or even 1930 or '35, you would typically see for a crime
2 or crimes like these, a detailed story, and most people in
3 their community would be aware of it. It is, I think,
4 correct that if people knew of the punishment that occurs in
5 connection with this criminal conduct in federal cases that
6 it would have a stronger effect, but some people do. There
7 have been studies, although they're somewhat older now, which
8 show that in communities and cities where it is well
9 publicized that gun crimes have serious consequences, very
10 serious real consequences, that gun violence is reduced. And
11 I think that Mr. Whitmore and Mr. Ferguson and I remember a
12 period where there was a stronger emphasis on that, and it
13 was a good thing for society. The fact is that if known to
14 the public, these substantial sentences can certainly be
15 anticipated to have the desired effect under 18 U.S.C.
16 Section 3553(a). So a substantial sentence would deter crime
17 if that sentence is well known.

18 Now, the third thing that we're required to
19 consider is the need to protect the public from further
20 crimes by the Defendant. This is complicated in this case.
21 It is correct, as Mr. Ferguson observes, that if you simply
22 looked at the criminal history of Mr. Coleman, Mr. Coleman,
23 if we were looking at that, we would think that the chance of
24 recurrence of this criminal conduct was not great, but we
25 have this series of events, not a single robbery but a series

1 of events which puts before the Court the prospect that this,
2 which was clearly a deliberate decision to engage in this
3 conduct, maybe be conduct that would be repeated, that this
4 reflected some type of decision which was then implemented
5 over a period of days. So there may be in this case a need
6 to protect the public from further crimes. It's not as great
7 as in some matters where it is clear that the person is very
8 likely to, but in this case, it's a greater possibility than
9 the criminal history would have suggested.

10 Final thing is the sentence needs to provide the
11 Defendant with educational and vocational training, medical
12 care and other correctional treatment in the most effective
13 manner. Certainly I know Mr. Coleman is interested in
14 getting his GED and addressing -- I think you will need to
15 address this issue with controlled substances, and so those
16 are things that would be part of the focus for a sentence in
17 the case. In this case we would also typically require MRT
18 training, that's moral reconnection training, which helps
19 individuals understand the decision making process and things
20 they can do to improve that. And it's been suggested that we
21 have a search condition in this case as a way to discourage
22 engaging in other criminal activity, and of course there's a
23 DNA sample.

24 Once you know those four factors, then you ask
25 yourself, the Court asks itself another set of questions.

1 The first question is what is the maximum sentence available.
2 Well, obviously, the maximum sentence available if you look
3 at the overall situation is life in prison. No one is
4 suggesting it, but we need to know if you look at the 924(c)
5 charges that that is the type of sentence that at some point
6 in some circumstances courts are required to consider. We
7 know a very long period of time and we've gone over the
8 guideline range, and we've gone over the sentencing ranges in
9 connection with the crimes involved.

10 The point about the 20-year maximum sentence on
11 robbery and the very long maximum sentence on 924(c)s is that
12 these are very serious crimes, and we have to consider that.
13 The second thing we have to consider is the guideline range.
14 We've talked about the guideline range already. The
15 Government requests something in between the 57 and
16 71 months. The Defendant requests that we eliminate that and
17 provide a time served sentence because of some of the
18 background information in the case.

19 We are required to consider guideline sentences
20 in every circumstance. The reason is that the guidelines are
21 universal in the federal courts. Every court looks at the
22 same guideline calculation. If Mr. Coleman was in Portland,
23 Oregon or Portland, Maine or in Salt Lake City, Utah, the
24 judge would be looking at the same calculation. And that
25 provides a level of objectivity which is central to the

1 formulation of sentences. We do not want sentences that are
2 emotional or that are responsive to subjective factors. That
3 is simply inappropriate. We want an objective sentencing
4 process, one that essentially asks what did you do and what
5 do we need to do about that for the good of society and then
6 for your future.

7 The next thing that we are required to look at
8 and be sure we have considered is the need to avoid
9 unwarranted sentencing disparity. That's a complicated
10 question. But courts want to have essentially the same
11 sentence or something close to the same sentence for the same
12 criminal conduct in every case in the United States. We
13 don't want people to get in one circumstance always time
14 served, for example in the robbery category and another
15 situation where you always get 20 years. That would be
16 disturbing. Sentences should be consistent across the
17 country as much as is practical, bearing in mind that we
18 always have to consider each individual and the particular
19 conduct in each case in formulating any sentence.

20 Then there's the requirement for restitution
21 where there's been the request for restitution. In this case
22 that's not a factor because at least I'm not aware of any
23 information that we've received on restitution category. But
24 if we had that from Waffle House or anywhere else that was
25 affected by the crime, they would be entitled to get paid

1 back. That's what we have to consider.

2 Now, the tragedy in every case is, as Mr. Coleman
3 observed, essentially good people make terrible mistakes, and
4 we understand that. The Court is not here to tell the family
5 or tell Mr. Coleman you're a bad person. You did a bad
6 thing. That's clear. Several bad things, but that doesn't
7 say that the person is inherently bad. That means that there
8 were bad things done. Good people make bad mistakes.

9 Now -- and this isn't the case here, but I would
10 think it would be fair to tell everyone that Mr. Whitmore and
11 Mr. Ferguson and Ms. Boyce and I and the court reporter and
12 everybody else have seen some people that seem genuinely
13 committed to doing bad things all the time. That, we hope,
14 is not the case for Mr. Coleman, and it's not what we're
15 looking at, we hope. So Mr. Coleman, I'm not discounting
16 your statement on this at all. We all hope that that would
17 be what the future will hold.

18 The sentence that should be imposed in this case
19 -- and I've really considered what the Government said on at
20 least a middle level sentencing range here, but the overall
21 sentence, Mr. Whitmore, is so great that the low end of that
22 guideline will still achieve the punishment necessary to
23 achieve just punishment but no more than is necessary. I
24 thought about it, but the sentence should still be a
25 guideline sentence, Mr. Ferguson. Robbery is an armed

1 robbery in this case, very serious matter.

2 The sentence for the robberies should be
3 57 months. That's four years and 9 months. And it is the
4 guns and the use and brandishment of a firearm in the case
5 that is the fatal problem for the Defendant in this case. It
6 is a 14-year sentence. That's the least sentence available
7 in that circumstance, and it's required to be consecutive to
8 the robbery sentence.

9 I will tell that you no one, Mr. Coleman, is
10 going to be happy with this. I know your family won't be
11 happy. No one -- this is not about making people happy.
12 This is about achieving a better society through the
13 consistent application of a sentencing process that results
14 in similar sentences over long periods of time and change in
15 societal behavior. That's what it's about, and it's about
16 punishment for the particular crimes that were committed in
17 this case. That's what it's about.

18 So what I'm going to do is impose a 57-month
19 sentence on Count 3 and on Count 5, but that's to served
20 concurrently. So that's one sentence of 57 months. It will
21 be an 84-month sentence on Count 4 and an 84-month sentence
22 on Count 6. Those sentences are served consecutively and
23 consecutively to the sentences in Counts 3 and 5 for a total
24 sentence of 18 years and 9 months. That is 225 months.

25 Upon -- I'm going to go through -- of course also

1 impose a period of supervised release of three years. That's
2 the really minimum when you look at the provisions on
3 supervised release. It's not the minimum but it's the in
4 between supervised release period actually because on
5 Counts 3 and 5 sentence on supervised release or the
6 supervised release period would be 1 to 3 years on
7 Counts 4 and 6, 2 to 5 years, but impose the conditions that
8 we talked about earlier, and I'm going to impose a \$400
9 special assessment which is required by the law. It's a
10 hundred dollars per count of conviction. In this case, of
11 course, you'll have a right to appeal, and we'll go over
12 that.

13 Before I impose the sentence, are there any
14 requests for further clarification on that matter? And I'm
15 going to -- yes, sir, I'm going to start with the Government.
16 Anything else of course that we need to hear from the
17 Government?

18 **MR. WHITMORE:** No, Your Honor, thank you.

19 **THE COURT:** Mr. Ferguson?

20 **MR. FERGUSON:** Your Honor, would the Court
21 recommend him for the RDAP program based on his admission of
22 drug use up to the time of his arrest and his lack of
23 previous treatment or assistance in that addiction?

24 **THE COURT:** And so you want him recommended for
25 the drug treatment program available in the prisons?

1 **MR. FERGUSON:** Please, sir.

2 **THE COURT:** Absolutely, and a comment about that
3 because I know this goes to the experience that both defense
4 counsel and government counsel and probation officer have
5 seen over so many years is that there tends to be a tendency
6 to minimize the impact of this long-term marijuana use, and
7 yet, it's very significant, and it needs to be addressed
8 because of its impact on the way a person thinks and then
9 some of the detrimental long-term effects from its long-term
10 use. So we need to recommend that, the RDAP program, we'll
11 recommend it in the case. Anything else?

12 **MR. FERGUSON:** No, Your Honor.

13 **THE COURT:** Then pursuant to the Sentencing
14 Reform Act, it is the judgment of the Court that the
15 Defendant Frederick Coleman is hereby committed to the
16 custody of the Bureau of Prisons to be imprisoned for a term
17 of 57 months on each of Counts 3 and 5 to be served
18 concurrently with each other for a total period of 57 months
19 on those two counts. And a sentence on Count 4 of 84 months
20 plus the sentence on Count 6 of 84 months. Those sentences
21 to be served consecutively and then consecutively with the
22 sentences under Counts 3 and 5, resulting in a total sentence
23 of 18 years and 9 months, that is 225 months.

24 We will recommend the drug program as requested
25 by Mr. Ferguson. And Mr. Coleman, it really is important to

1 participate in that. Upon release from imprisonment, the
2 Defendant shall be placed on supervised release for a term of
3 three years. This consists of three years on each of
4 Counts 3, 4, 5 and 6, all counts to run concurrently for a
5 total period of supervised release of three years. Within
6 72 hours of release from the custody of the Bureau of
7 Prisons, Mr. Coleman, you are to report in person to the
8 probation office in the district in which you're released.

9 You're to abide by the following conditions of
10 supervised release. You're to cooperate in providing a DNA
11 sample. You're to participate in a GED program, which I
12 understand you would like to do, or -- and/or a vocational
13 training program. You're also to participate in drug testing
14 and drug treatment and to participate in MRT training. I
15 will note that I have noticed that in supervision on
16 probation, sometimes we don't get to that, but I think we
17 really need to, and the second thing on that is that will
18 evolve over the years and may be called something a little
19 different by the time that you're released.

20 We're also going to impose a search condition in
21 this case, and there was no opposition to that. It does have
22 some beneficial effects, and I am always concerned about the
23 imposition of those conditions, but in light of the fact that
24 it has not been opposed and it may have some beneficial
25 effect, we will include that condition to supervised release.

1 You're also, of course, not to commit another
2 federal, state or local crime. You are to abide by the
3 Court's standard conditions of supervised release. You are
4 not to possess any illegal controlled substances, and you are
5 not to possess a firearm, ammunition or explosives. That's
6 an absolute requirement that you not do that, and if you do
7 possess a firearm, ammunition or explosives, you can be
8 subjected to a very substantial sentence in a separate
9 criminal charge in the future. The family really needs to
10 know that so that they can help you avoid being compromised
11 by possession of any of those materials. You're also to pay
12 a special assessment of \$400, which is due at this time.

13 Now, in this case you went to trial, and
14 therefore you have a right to appeal your conviction in this
15 case, and you have a right to appeal the sentence that's been
16 imposed by the Court in this case. You can particularly
17 appeal the sentence, of course, if the sentence is not one
18 allowed by the law, or if there's some other problem in
19 connection with the calculation of the sentence, although
20 there was no objection other than the limited ones raised in
21 this matter. If you're not able to pay the cost of an
22 appeal, you may apply for leave to appeal in forma pauperis.
23 If you do that, the clerk will prepare and file a notice of
24 appeal in your behalf, and the courtroom deputy is going to
25 hand to you -- and I think this is sort of figuratively, you

1 will be handed and will be supplied a form which you can use
2 to file your own notice of appeal.

3 Mr. Ferguson, I'd like for you to make sure that
4 Mr. Coleman does get that form if he would like to use it.

5 **MR. FERGUSON:** I will check in with him, Your
6 Honor. I'm not retained to handle the appeal, but I have
7 already indicated, I can't remember who I said this to, but
8 -- and to Mr. Coleman, I will make sure that he gets it and
9 make sure that if he does wish to appeal, either he does it
10 correctly or I will do it for him, but I will make sure --
11 one way or the other, I will make sure that his wish is
12 effectuated.

13 **THE COURT:** Yes, sir. Mr. Coleman, I will check
14 with you. You might have it in front of you. I don't know
15 that you do. Do you currently have that form?

16 **THE DEFENDANT:** Yes, Your Honor.

17 **THE COURT:** Okay. Well, that's good and you
18 heard Mr. Ferguson, and he will assist in getting it filed if
19 necessary. Now, let me go over a couple of things in that
20 regard. Any notice of appeal must be filed within 14 days of
21 the entry of the judgment. The judgment will be entered
22 today. Today is January 26th of 2021. If you do not file
23 the notice of appeal within that time period, you essentially
24 give up forever your right to appeal any aspect of these
25 proceedings.

1 I've already indicated that there's several ways
2 to proceed with an appeal. You can file the notice. You can
3 instruct Mr. Ferguson to file it. He's not representing you
4 on the appeal. He would make sure that it was filed. You
5 can tell us now, that is, you can tell Mr. Sample who is the
6 courtroom deputy clerk that you instruct him to file a notice
7 of appeal, and we would file it. You may seek leave to
8 proceed in forma pauperis, and if you do that, the clerk
9 would prepare and file a notice of appeal, but if you fail to
10 do any of those things, you will give up forever your right
11 to appeal your conviction and your right to appeal the
12 sentence in this case. Do you understand that?

13 **THE DEFENDANT:** Yes.

14 **THE COURT:** Well, I think we've covered
15 everything that we need to in this case. Are there any
16 objections not previously raised by the Defense in this case?

17 **MR. FERGUSON:** No, Your Honor.

18 **THE COURT:** Any requests for clarification or,
19 for that matter, objection by the United States?

20 **MR. WHITMORE:** No, Your Honor, thank you.

21 **THE COURT:** Thank you all very much. We
22 appreciate --

23 **PROBATION:** Excuse me, Your Honor.

24 **THE COURT:** Yes, ma'am.

25 **PROBATION:** I just wanted to make a note that the

1 Defendant has a pending case in Shelby County criminal court.

2 **THE COURT:** Yes. The Defendant does have a
3 pending case. Yes, that's absolutely correct. I don't know
4 the status on that. I understand it's simply pending, and I
5 don't have an update.

6 **PROBATION:** His next court date is April the
7 16th.

8 **THE COURT:** Thank you so much. Thanks for
9 telling me. I think that concludes everything in this
10 matter. And we will let everyone be excused. Thank you all
11 very much.

12 **MR. WHITMORE:** Thank you.

13 **MR. FERGUSON:** Thank you, Your Honor.

14 (Adjournment.)
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C E R t I F I C A t E

I, LISA J. MAYO, do hereby certify that the foregoing 42 pages are, to the best of my knowledge, skill and abilities, a true and accurate transcript from my stenotype notes of the SENTENCING HEARING on 26th day of February, 2021, in the matter of:

United States of America

vs.

FREDERICK COLEMAN

Dated this 05.11.2021.

S/Lisa J. Mayo

LISA J. MAYO, LCR, RDR, CRR
Official Court Reporter
United States District Court
Western District of Tennessee